

### REMARKS

This paper is presented in response to the non-final official action dated March 10, 2010, wherein (a) claims 1-35 were pending, (b) claims 1-7 and 27-31 were withdrawn from consideration, (c) claims 14-25 and 35 were rejected as failing to comply with the enablement requirement, (d) claims 8-15, 18-20, 23-26, 33, and 35 were rejected as being anticipated by Kohlstrung, (e) claim 32 was rejected as being obvious over Kohlstrung, and (f) claims 8-26 and 32-35 were rejected as being obvious over Martin in view of Miele.

By way of the foregoing, claims 1-7, 15-25, 27-31, and 35 are canceled; claim 8 is amended; and claim 36 is added. Support for the amendments to claim 8 and for new claim 36 can be found throughout the detailed description in combination with the figures. No new matter is added.

Claims 8-14, 26, 32-34, and 36 are pending and at issue. Claims 8 and 36 are independent.

Prompt and favorable consideration of the application, as amended, is solicited.

### INDEFINITENESS REJECTIONS

Claims 14-25 and 35 are rejected as failing to comply with the written description requirement. This rejection is respectfully traversed, and reconsideration is requested. Claims 15-25 and 35 are canceled herein, thereby rendering this rejection moot as it pertains to claims 15-25 and 35. Claim 14 recites that the reservoir is provided in one of the inner casing, a quenching chamber and a boiler of a steam generator. The official action asserts that the detailed description does not mention a boiler, and therefore, claim 14 is not enabled. The test of enablement is "whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation." MPEP §2164.01 (citing *United States v. Teletronics, Inc.*, 857 F.2d 778, 785, 8 USPQ2d 1217, 1223 (Fed. Cir. 1988)).

In the present instance, one reasonably skilled in the art of cooking appliances understands that such cooking appliances are often equipped with steam generators having boilers for cleaning the appliance. This is evidenced, for example, in the background section of the application, which describes that WO 02/068876 A1 discloses a conventionally-known cooking device that describes a method for cleaning the cooking device by introducing fresh water, which can be filled particularly from the boiler of a steam generator. Accordingly, the present application enables claim 14, as originally filed, to a person having ordinary skill in the art.

Reconsideration and withdrawal of the outstanding indefiniteness rejections are respectfully requested.

#### **ANTICIPATION REJECTIONS**

Independent claim 8 is directed to a cooking device comprising, in part, an inner casing with a cooking chamber, a ventilation device, at least one reservoir, a filling- and/or charge-amount-monitoring device, and a control or regulation device. The ventilation device includes a fan for circulating fluid in the inner casing, wherein the fluid is provided from the reservoir. As amended, independent claim 8 defines the at least one reservoir as constituting a part of a recirculation circuit. Claim 8 is further amended to recite that the control or regulation device cooperates with the ventilation device and/or the filling- and/or charge-amount-monitoring device such that the state of filling or the amount of filling of the recirculation circuit is determined by the control or regulation device. Further still, amended claim 8 recites that the filling- and/or charge-amount-monitoring device cooperates with the ventilation device and determines at least one parameter characteristic for the amount of fluid incident on the fan.

So configured, the cooking device of claim 8 is advantageously capable of maintaining a desired state or amount of fluid in the recirculation circuit while performing a washing operation through the implementation of the filling- and/or charge-amount-monitoring device and/or the control or regulation device. That is, the filling- and/or charge-amount-monitoring device as well as the control or

regulation device, which maybe combined in one device, actively analyze measurements to determine an amount of fluid that is circulated in the recirculation circuit, especially the amount of fluid that exists in the at least one reservoir. For this determination the filling- and/or charge-amount-monitoring device analyzes the operational parameters of the ventilation device to determine a parameter being characteristic for the amount of fluid that is incident on the fan and based on this data the amount of filling is determined. This is especially advantageous because it eliminates that need for a sensor in direct contact with the re-circulated fluid. Rather, an effective indirect, and non-contact measurement of the amount of fluid is possible.

Kohlstrung neither discloses nor suggests such a combination of features.

The official action asserts that Kohlstrung discloses a cooking device comprising “a filling- and/or charge-amount-monitoring device 16 for the reservoir; and a control or regulation device 14...,” as recited in the claims of the present application. The component associated with reference numeral 16 in Kohlstrung constitutes a valve, and the component associated with reference numeral 14 is a pump. See, column 4, lines 32-37 of Kohlstrung. As such, the official action equates a valve to the a filling- and/or charge-amount-monitoring device of the present application, and a pump to the control or regulation device.

The official action has misconstrued the claims of the present application, and therefore, misapplied the teachings of Kohlstrung to anticipate the pending claims. A person having ordinary skill in the art of cooking devices would understand that the filling- and/or charge-amount-monitoring device and the control or regulation device recited in the pending claims do not constitute a valve and a pump, respectively, but rather they constitute one or more electronic devices, e.g., computers, capable of performing specified functions. This is both supported by the language of amended independent claim 8 itself, and the specification. For example, amended claim 8 states that the state of filling or the amount of filling of the recirculation circuit is determined by the control or regulation device in that the filling- and/or charge-amount-monitoring device cooperates with the ventilation device and determines at least one parameter characteristic for the amount of fluid incident on the fan. Neither

the pump nor the valve of Kohlstrung can perform these functions. As such, the pump and valve cannot be equated to the claimed features.

Moreover, while the applicants understand that the claims must be given their broadest reasonable interpretation during examination, patent office policy also dictates that the claims must be construed in light of the specification. See, MPEP §2111.01 (citing *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369 (Fed. Cir. 2004) (holding that during examination the USPTO must give claims their broadest reasonable interpretation in light of the specification)). The specification describes a cooking device that includes a variety of components including the aforementioned filling-monitoring device, charge-amount-monitoring device, and control or regulation device. Each of these components is described in the context of a control device 8 that communicates with other components of the system including a valve 16, a pump 11, a fan 3, etc.

Accordingly, as stated above, a person having ordinary skill in the art would understand that the filling-monitoring device, the charge-amount-monitoring device, and the control or regulation device constitute one or more electronic devices, e.g., computers, capable of performing specified functions. Kohlstrung fails to disclose such electronic devices in combination with the other features of amended independent claim 8, and therefore, the anticipation rejections based on Kohlstrung should be withdrawn.

Furthermore, there is no suggestion to modify Kohlstrung to arrive at the claimed invention. Kohlstrung makes absolutely no mention of directly or indirectly analyzing the movement of a ventilation device, such as the load of a fan of the ventilation device, to arrive at a parameter that is characteristic for the amount of fluid that is incident on the fan and to use this parameter to determine the amount of a fluid that is circulated, as recited in amended independent claim 8. Rather, in column 4, lines 32 to 37, Kohlstrung only discloses determining the absolute amount of fluid introduced into a recirculation circuit based on a speed of an impeller, in the sense that the impeller always rotates at the same speed. This is determined in order to fully cover an internal wall of the cooking device with the fluid. Accordingly,

any attempt to modify Kohlstrung to arrive at the claimed invention can only be based on improper hindsight gleaned from applicants' own disclosure.

Reconsideration and withdrawal of the outstanding anticipation rejections are requested.

### **OBVIOUSNESS REJECTIONS**

The official action asserts that claims 8-26 and 32-35 are rejected as obvious over Martin in view of Miele "as applied in applicant's international application no. PCT/DE2004/02449."

The applicants are perplexed by this rejection. The written opinion of the international searching authority issued in connection with PCT/DE2004/02449, an English-language translation of which was submitted in the present application by applicants on October 5, 2006, indicates that each of the claims pending in the PCT application is both novel and inventive over the cited prior art, including Martin and Miele. In fact, the written opinion states and the applicants reassert here, that a person having ordinary skill in the art would not arrive at independent claim 8 when considering Martin and Miele because "power consumption in the dishwasher as per [Martin] is measured at the pump. However, in the baking oven as per the [present] application, this measurement is not carried out the recirculation pump (likewise present), but at the fan." Therefore, there is no suggestion to combine the cited references to arrive at amended independent claim 8.

Reconsideration and withdrawal of the outstanding obviousness rejections is therefore respectfully requested.

### **NEW CLAIM**

New claim 36 is directed to a cooking device comprising, in part, an inner casing, a ventilation device with a fan, a recirculation circuit, a valve and a pump, a filling-monitoring means, and a charge-amount-monitoring means. The filling-monitoring means is defined as being operatively coupled to at least one of the valve and the pump for moving a desired amount of the at least one fluid into the recirculation circuit. The charge-amount-monitoring means is defined as being

operatively coupled to the ventilation device for determining at least one parameter characteristic for the amount of fluid incident on the fan.

The cited prior art fails to disclose or suggest each and every feature of new claim 36.

Specifically, the prior art fails to disclose (1) a filling-monitoring means that is defined as being operatively coupled to at least one of the valve and the pump for moving a desired amount of the at least one fluid into the recirculation circuit, and (2) a charge-amount-monitoring means that is defined as being operatively coupled to the ventilation device for determining at least one parameter characteristic for the amount of fluid incident on the fan. The foregoing limitations invoke 35 U.S.C. §112, paragraph 6, and therefore, are to be construed as “means” limitations. The structure set forth in the written description corresponding to the claimed function constitutes a control device 8, which a person having ordinary skill in the art would understand to be an electronic device such as a general purpose computer. The proper claim construction inquiry does not end there, however.

In the context of “a means-plus-function limitation in which the disclosed structure is a computer, or a microprocessor, programmed to carry out an algorithm, the disclosed structure is not the general purpose computer, but rather the special purpose computer programmed to perform the disclosed algorithm.” *WMS Gaming, Inc. v. International Gaming Technology*, 184 F.3d 1339, 1349 (Fed. Cir. 1999) (citing *In re Alappat*, 33 F.3d 1526, 1545 (Fed. Cir. 1994) (en bac)). The structure includes the specific algorithm or algorithms disclosed in the specification of the subject patent and not just any algorithm capable of performing the claimed function. *WMS Gaming*, 184 F.3d at 1348.

In the present instance, the filling-monitoring means includes a filling monitoring device programmed to carry out a specific algorithm as described in paragraphs [0043]-[0049] of U.S. Patent Application No. 2007/0137496 A1, which constitutes the published version of the present application. Moreover, the charge-amount-monitoring means includes a charge-amount-monitoring device programmed to carry out a specific algorithm as is also described in paragraphs [0043]-[0049].

Neither Kohlstrung, Martin, nor Miele, alone or in combination, disclose or suggest each and every feature of properly construed new claim 36.

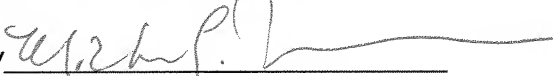
### CONCLUSION

In view of the foregoing, the applicants believe that all outstanding rejections, objections, and other concerns have been either accommodated, traversed, or rendered moot. Therefore, the application is in condition for allowance. Such action is solicited.

Should the examiner wish to discuss any of the foregoing, or any matter of form or procedure related to the present application, the examiner is urged to contact the undersigned at (312) 474-6300.

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Respectfully submitted,

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